United Nations CCPR/C/120/D/2173/2012

International Covenant on Civil and Political Rights

Distr.: General
23 August 2017

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2173/2012*, **

Communication submitted by:	Dzhuraboy Boboev (represented by counsel, Sergei Romanov)
Alleged victims:	The author and his deceased son, Ismonboy Boboev
State party:	Tajikistan
Date of communication:	9 July 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 17 July 2012 (not issued in document form)
Date of adoption of Views:	19 July 2017
Subject matter:	Torture and death of the author's son in police custody
Procedural issue:	Non-substantiation of claims
Substantive issues:	Right to life; torture; prompt and impartial investigation of torture
Articles of the Covenant:	6 (1) and 7, separately and in conjunction with 2 (3)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Dzhuraboy Boboev, a Tajikistan national, born in 1954. Mr. Boboev submits the present communication on his own and on behalf of his deceased son, Ismonboy Boboev. He claims a violation by Tajikistan of his son's rights under articles 6 (1) and 7, read separately and in conjunction with article 2 (3); and his own rights under article 7, read separately and in conjunction with article 2 (3), of the Covenant. The Optional Protocol entered into force for the State party on 4 April 1999. The author is represented by counsel.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

GE.17-14585(E)

Please recycle

The facts as submitted by the author

2.1 For several years,[1] the author's son, Ismonboy Boboev, had been residing in the Russian Federation and had acquired that country's citizenship. The author's son travelled to Tajikistan to visit his parents and take back his daughter, who was visiting her grandparents.

2.2 On 19 February 2010, at around noon, the author's son was arrested in the city of Isfara. The arrest occurred near the city's main mosque, and the arresting officers informed the author's son that he was suspected of membership in the extremist organization called "The Islamic Movement of Turkestan".[2] When friends of the author's son noticed his absence, they called his mobile phone. The phone was answered by officer F.S., who introduced himself as a police officer and informed the friends that Ismonboy Boboev had been arrested and subsequently transferred to the city of Khudzhand.

2.3 The author claims that he immediately contacted the police departments in both Isfara and Khudzhand. Both police departments, however, refused to provide any information relating to his son's whereabouts. On 20 February 2010, the author was informed that his son was dead.

2.4 Upon receiving this information, the author went to the police department in Khudzhand and requested to see the record of his son's arrest. The police refused to provide any documents. The author then demanded to see his son's body. He was taken to the criminal forensics department where his son's body was kept.

2.5 The author's son's body had clear signs of beating, bruises below the knees and dark marks of what he thought were electric burns on his fingers. The author requested a document recording the signs of torture and that his son had died as a result of beating. The medical experts refused to issue such a document and insisted that the author's son had arrived at the police station with bruises and electric burns and his death occurred because "he choked on his own tongue".

2.6 On 23 February 2010, the author asked the police in Khudzhand to inform him about the investigation into his son's death. The police told him that they had not launched such an investigation since there was no report by forensics experts as yet. The author demanded that an investigation be launched, nevertheless, and went to meet with the local administration. He also wrote letters to the President of Tajikistan, the Prosecutor General and other officials.

2.7 The criminal investigation into the death of Ismonboy Boboev was finally launched on 5 March 2010, some 14 days after his death. The investigation named F.S. and A.M., two officers of the Sughd Region police who had arrested Ismonboy Boboev, as suspects.

2.8 On 10 March 2010, the criminal forensics experts issued their first report. The report stated that the cause of death was "mechanical asphyxiation" as a result of swallowing one's own tongue. The report, however, did not state why the author's son had swallowed his tongue. On 29 March 2010, in addition to the initial charge of murder, the suspects, F.S. and A.M., were also charged with abuse of power, and on 31 March 2010, with extortion. On an unknown date, all three criminal charges were combined into one.

2.9 The author requested that another autopsy be performed. That was done and the results were issued on 6 April 2010 by the State Regional Centre for Criminal Forensics. This second forensic medical examination concluded that the author's son died of an electrical injury and severe heart and respiratory failure, which, the author submits, shows clearly that his son was tortured and died as a result of torture and ill-treatment.

2.10 On 25 June 2010, the criminal case was "suspended" owing to health issues of the two suspects, police officers F.S. and A.M. The case remains suspended as of the date of the submission of the present communication. During that time, F.S. left the police force on

[1] The author does not specify exact dates.

[2] According to the author, the arrest was carried out by the Office for Combating Organized Crime, Department of Internal Affairs, Sughd Region.

his own volition, and A.M. was promoted to Deputy Chief of the Sughd Regional Police Department. In 2011, A.M. was dismissed from the police force.

2.11 The author filed numerous complaints, including with the Prosecutor's Office, the President of Tajikistan and other government agencies, requesting that they facilitate an investigation into the death of his son. The author received two replies from the Prosecutor's Office of the Sughd Region, dated 15 July 2010 and 7 February 2012, stating that the Prosecutor's Office was continuing the investigation. The Prosecutor's Office informed the author that it was taking steps to interview a key witness, N.M., who resided in the Russian Federation.[3]

2.12 On 3 October 2011, the author was able to obtain legal assistance from the non-governmental organization, "Independent Centre for Protection of Human Rights". On 7 October 2011, counsel for the author requested the Prosecutor's Office of the Sughd Region and the Prosecutor General's Office permission to access the files of the criminal investigation. The request was rejected based on article 42, paragraph 2 (8) of the Criminal Procedure Code of Tajikistan, which states that victims in criminal cases may obtain access to the files only after completion of the investigation.

2.13 On 20 October 2011, the author filed a complaint to the Constitutional Court of Tajikistan, requesting it to pronounce on whether article 42, paragraph 2 (8) of the Criminal Procedure Code of Tajikistan was in compliance with the provisions of the Constitution of Tajikistan, the provisions of articles 6 and 7, read in conjunction with article 2 (3), of the International Covenant on Civil and Political Rights, and the provisions of article 2 (3) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 15 May 2012, the Constitutional Court of Tajikistan rejected the author's complaint, declaring the provisions of article 42 to be constitutional, and stating that the examination of the criminal case file during the preliminary investigation "would weaken" the investigation process.

The complaint

3.1 The author claims a violation of his son's rights under articles 6 (1) and 7 of the Covenant, because his son's death resulted from torture inflicted by the police officers, and the inadequate investigation conducted by the State party's authorities was an attempt to conceal the crimes committed by its agents. The author refers to the Committee's jurisprudence in *Eshonov v. Uzbekistan*[4] and its general comment No. 6 (1982) on the right to life in support of his arguments.

3.2 The author also claims that, in the light of the violent death of his son, the State party was under an obligation to initiate an investigation into the circumstances of his son's death, including questioning witnesses and punishing those who were guilty; failure to do that constitutes a violation of his son's rights and his own rights under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant.

3.3 The author further claims a violation of his rights under article 7 of the Covenant, because for two years he has been living in constant psychological stress, as he did not know what exactly happened to his son, which, he alleges, constitutes cruel and inhuman treatment.

3.4 The author claims a violation of his rights under articles 6 (1) and 7, separately and in conjunction with article 2 (3), of the Covenant, with regard to the application of article 42 (2) (8) of the Criminal Procedure Code of Tajikistan, which denied his right to access the files of the criminal case. The author refers to the Committee's jurisprudence in *Sathasivam and Saraswathi v. Sri Lanka*[5] and its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant in support of his argument that a criminal investigation and consequential prosecution are necessary

[3] N.M. was recognized as a witness and as a victim, since he claimed to have been tortured by the same police officers. The results of that interview, if it ever occurred, were not provided by either the author or the State party.

[4] Communication No. 1225/2003, Views adopted on 22 July 2010.

[5] Communication No. 1436/2005, Views adopted on 8 July 2008.

remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant. He also claims that access to the files of the criminal case was necessary to ensure an effective investigation of the case.

State party's observations on admissibility and merits

4.1 On 22 August 2013 and 3 April 2014, the State party provided its observations on the admissibility and merits of the present communication.

4.2 The State party submits that on 19 February 2010, the author's son was detained by several police officers on suspicion of being a member of the criminal group known as "The Islamic Movement of Turkestan". He was brought to the police station and on that same day, he died in the office of the chief of the police unit. The city Prosecutor's Office was informed about the incident.

4.3 The State party also submits that a forensic examination was ordered and carried out from 20 February to 2 March 2010. The examination concluded that the death of Ismonboy Boboev was the result of "mechanical asphyxiation" because Mr. Boboev swallowed his tongue, and not as a result of electric shock. The bruises on Mr. Boboev's hands and knees were considered as "light bodily injuries".[6]

4.4 Given that Ismonboy Boboev's death occurred at the police station and further to the requests from the relatives of the deceased, the Prosecutor's Office initiated a criminal investigation under article 104 (murder) of the Criminal Code of Tajikistan.

4.5 Mr. Boboev's relatives disagreed with the findings of the initial autopsy examination and requested a second examination, which was carried out on 3 April 2010, and results were issued on 6 April 2010. The experts could not definitively ascertain the cause of death, but did not exclude that it was due to electric shock.

4.6 The Prosecutor's Office also questioned two suspects in the case, police officers A.M. and F.S. Both officers testified that they had no information regarding the cause of Ismonboy Boboev's death, and that they did not torture him while he was in detention.

4.7 The criminal investigation was later suspended owing to health issues of the two suspects. On 29 August 2012, the Prosecutor General's Office reopened the criminal investigation and referred it to the Prosecutor's Office of Sughd Region. The Prosecutor's Office could not reconcile the differences in the two autopsy reports and considered the "question of appointing a comprehensive criminal forensics examination".[7]

4.8 The State party further submits that the Prosecutor's Office had also considered "additional investigative actions".[8] Given the foregoing, the investigation remains open and torture has not been established as the cause of Ismonboy Boboev's death. The initial delay in the investigation process was owing to the "non-obviousness of the circumstances of the incident", "absence of witnesses" and the "necessity to gather appropriate evidence".

4.9 The State party claims that the author did not exhaust all available domestic remedies and the communication must be considered inadmissible.

4.10 The State party denies the author's allegations that he did not have access to the results of the criminal investigation into his son's death. It states that Ismonboy Boboev's relatives "were informed" about the results of both autopsies. All complaints and requests sent by his relatives to different government agencies were carefully considered and "appropriate responses" were provided.

4.11 Under article 42 of the Criminal Procedure Code of Tajikistan, the victim in the criminal case and his or her representatives cannot have access to the criminal investigation case file while it is ongoing. Access can only be granted after the investigation is completed. That was confirmed by the Constitutional Court of Tajikistan.

[6] The State party does not provide any further information regarding these injuries.

[7] The State party does not provide any further information on the examination.

[8] No further information is provided.

Author's comments on the State party's observations on admissibility and merits

5.1 On 4 November 2013 and 3 July 2014, the author provided his comments on the State party's observations on admissibility and merits. Specifically with regard to the State party's argument that the communication should be considered inadmissible, the author submits that he has exhausted all domestic remedies.

5.2 In addition to complaints to the Prosecutor's Office, which were submitted on 7 and 27 July 2012, the author also submitted a complaint to the Sughd Regional Court on 27 March 2013, claiming that the suspension of the investigation into the allegations of torture of his son was unlawful. On 10 April 2013, the Sughd Regional Court agreed with the author and ordered the Prosecutor's Office to reopen the investigation. The cassation panel of the Sughd Regional Court and the Supreme Court of Tajikistan both affirmed that decision. Despite that decision on the part of the courts, the Prosecutor's Office did not conduct any investigative actions.

5.3 The author reiterates that he filed a complaint with the Constitutional Court of Tajikistan regarding the denial of his right to access materials of the criminal investigation.

5.4 As for the merits of the communication, the author contends that the State party failed to provide any information that would explain Ismonboy Boboev's death. The State party claims that the author's son was detained on suspicion of being a member of the "Islamic Movement of Turkestan". However, to date, neither the author nor his representatives have received a single piece of evidence confirming that his son was a member of this extremist group or that he had committed any crimes.

5.5 The author submits that the results of the autopsy dated 6 April 2010 indicate that Ismonboy Boboev's death could have occurred as a result of an electric shock.

5.6 The State party's submission also shows that the authorities were not interested in conducting a prompt, impartial and effective investigation of the torture allegations made by the author. The authorities failed to take any investigative actions prior to the submission of the complaint to the Committee as well as and after the submission of the complaint, despite numerous requests from the author.

Additional submissions by the parties

By the State party

6.1 On 19 September 2014,[9] the State party reiterated its position regarding the present communication, emphasizing that it had done everything to investigate the circumstances of Ismonboy Boboev's death. The investigators questioned all relevant witnesses, including two police officers, A.M. and F.S., who had arrested him, and both denied involvement in his death.

6.2 It confirmed that the investigation had been suspended and reopened several times, but the suspensions were owing to the health issues[10] of the two suspects in the case. On 6 February 2014, the investigation was reopened and remains open to this day. As submitted previously, the relatives of the deceased were kept informed of developments in the investigation.

By the author

7.1 The author submitted that the investigation could not be postponed indefinitely and still be considered effective. He drew the Committee's attention to the fact that the investigation had been suspended three times, each time, owing to "health issues" of the suspects.

7.2 The author submitted that he has requested access to the case file of the investigation into his allegations that his son had been tortured but, to date, his requests have been rejected. He stated that, from 2010 until the date of the present comments to the Committee,

[9] The State party made another submission on 15 March 2016, in which it reiterated its initial position.

[10] The State party does not provide any explanation regarding these "health issues".

he has been submitting complaints to the Prosecutor's Office and all have been either ignored or rejected.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the State party's argument that the author failed to exhaust all available domestic remedies owing to the fact that there is an ongoing investigation into the allegations of torture resulting in death. The Committee recalls its jurisprudence that the State party "cannot avoid the Human Rights Committee's review of a communication merely by claiming an ongoing investigation"[11] and without providing any details of the ongoing investigation, its results or prospects and estimated date of completion. Under the present circumstances and considering that seven years have passed since Ismonboy Boboev's death, the Committee considers that domestic remedies have been unreasonably prolonged.[12] The Committee accordingly finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication.

8.4 In the Committee's view, for the purposes of admissibility, the author has sufficiently substantiated his claims under articles 6 (1) and 7, separately and in conjunction with article 2 (3), of the Covenant with regard to his and his son's rights, and in relation to access to information contained in the investigation file. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that his son died as a result of the ill-treatment and torture he suffered in police custody. The Committee also notes that two autopsies were performed and the second autopsy, dated 6 April 2010, indicated that the cause of death could have been an electric shock. The State party denies those allegations, without providing an alternative plausible explanation of the circumstances of Ismonboy Boboev's death or explaining the so-called "light bodily injuries" or supporting its position with proper documentary evidence. The Committee observes that the State party failed to furnish it with any results of the investigation into Mr. Boboev's death. For example, the State party claims to have questioned witnesses, including two suspects, but has not provided the results of the questioning. It is also not clear to the Committee whether the State party's authorities questioned the author of the present communication, who witnessed his son's body bearing multiple signs of torture.

9.3 The Committee further notes the author's claim that the use of ill-treatment and torture on his son lead to the arbitrary deprivation of his son's life and his reference to the Committee's general comment No. 6 on the right to life. The Committee recalls its jurisprudence, according to which, States parties, by arresting and detaining individuals,

[11] See communication No. 1820/2008, *Krasovskaya and Krasovskaya v. Belarus*, Views adopted on 26 March 2012, para. 7.4.

[12] See, inter alia, communications No. 1560/2007, *Marcellana and Gumanoy v. Philippines*, Views adopted on 30 October 2008, para. 6.2; No. 1250/2004, *Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, paras. 6.1-6.2; and No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 8.3.

take the responsibility to care for their life,[13] and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights such as those protected by article 6 of the Covenant.[14] The Committee also recalls its general comment No. 31, in which it stated that, where investigations reveal violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible are brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 and 7 is an obligation of means, not of result,[15] States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against it and its authorities.

9.4 The Committee further recalls that the burden of proof in relation to factual questions cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.[16] In that regard, the Committee notes, in particular, that the authorities refused to provide the author access to the case files of the investigation.

9.5 The Committee concludes that, in the light of the State party's inability to rely on an adequate and conclusive investigation to rebut the author's allegations that his son died as a result of torture that he sustained while in custody, and in the light of the information contained in the second autopsy report, which is consistent with the author's version of the events, there has been a violation[17] of articles 6 (1) and 7 of the Covenant with regard to the rights of the author's son.[18]

9.6 As to the author's claims under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant that the State party failed in its obligation to properly investigate his son's death and his own allegations of torture and to take appropriate remedial measures, the Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 (1) and 7 of the Covenant.[19] The Committee notes that the investigation into the allegations of torture and the subsequent death of Ismonboy Boboev was not carried out promptly and effectively, and while two suspects were identified, the investigation itself was suspended three times owing to the suspects' "health issues". No further explanations were provided in that respect.[20] The Committee also notes that the author requested information regarding the investigation into the torture and subsequent death of his son, and that such requests were denied.[21] It emphasizes that, when the case file

---

[13] See communication No. 763/1997, *Lantsova v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

[14] See *Sathasivam and Saraswathi v. Sri Lanka*, para. 6.4; and communication No. 1275/2004, *Umetaliev and Tashtanbekova v. Kyrgyzstan*, Views adopted on 30 October 2008, para. 9.2.

[15] See communications Nos. 1917/2009-1918/2009, 1925/2009 and 1953/2010, *Prutina et al. v. Bosnia and Herzegovina*, Views adopted on 28 March 2013, para. 9.5.

[16] See communications No. 30/1978, *Lewenhoff and de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermit v. Uruguay*, Views adopted on 21 October 1982, para. 9.6.

[17] See communication No. 962/2001, *Mulezi v. Democratic Republic of the Congo*, Views adopted on 8 July 2004, para. 5.4.

[18] See *Sathasivam and Sarawathi v. Sri Lanka*, para. 6.2; communications No. 1186/2003, *Titiahonjo v. Cameroon*, Views adopted on 26 October 2007, para. 6.2; No. 888/1999, *Telitsina v. Russian Federation*, Views adopted on 29 March 2004, para. 7.6; and *Dermit v. Uruguay*, para. 9.2.

[19] See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14, and its general comment No. 31, para. 18.

[20] In *Eshonov v. Uzbekistan*, the Committee also noted the necessity of pursuing "investigations through an independent commission of inquiry or similar procedure" in cases of torture allegations, if "established investigative procedures are inadequate".

[21] The Committee recalls the provisions of The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), according to which, "the participation of the family members or other close relatives of a deceased or disappeared person is an important element of an effective investigation", and that the State parties "must enable all close relatives to participate effectively in the investigation, though without compromising its integrity" (para. 35).

is "inaccessible to the victim's close relatives",[22] the investigation itself cannot be regarded as an effective one that is "capable of leading to the identification and punishment of those responsible for the events in question".[23] Noting the failure of the State party to explain the necessity of keeping information from the author and the fact that no practical outcomes of the investigation are known, especially given the duration of the investigation, the Committee concludes that the State party has not justified its refusal to provide relevant information to the author. In the light of those circumstances and the unexplained suspensions of the investigation, the Committee concludes that the State party failed to launch a prompt, impartial and effective investigation into the circumstances of the death of the author's son and his allegations of torture and ill-treatment. As such, the State party has not provided an effective remedy, in violation of their rights under article 2 (3), read in conjunction with articles 6 (1) and 7.

9.7 The Committee observes that, although over seven years have elapsed since the death of the author's son, the author still does not know the exact circumstances surrounding it, and the State party's authorities have not indicted, prosecuted or brought anyone to justice in connection with this custodial death that occurred in highly suspicious circumstances. The Committee understands the continued anguish and mental stress caused to the author — the father of the deceased detainee — by this persisting uncertainty, which is amplified by the State party's refusal to provide any information about the investigation. In its view, that amounts to inhuman treatment of the author, in violation of article 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it discloses a violation by the State party of Ismonboy Boboev's rights under articles 6 (1) and 7, separately and in conjunction with article 2 (3), and of the author's rights under article 7, separately and in conjunction with article 2 (3) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy, in the form of full reparation. Accordingly, the State party is obligated to, inter alia, take appropriate steps to: (a) conduct a prompt and impartial investigation into torture and the death of Ismonboy Boboev, and to prosecute and punish those responsible; (b) keep the author informed at all times about the progress of the investigation; and (c) provide the author with compensation for the loss of his son's life, for the torture that his son suffered, and for the pain and anguish that he, himself, suffered as a result of his son's death. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to disseminate them widely in the official languages of the State party.

---

[22] European Court of Human Rights, *Oğur v. Turkey* (application No. 21594/93), judgment of 20 May 1999, para. 92.

[23] Ibid., para. 93.